

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JUNE 3, 2005**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on June 3, 2005, beginning at 10:05 a.m. The meeting was tape-recorded and the tapes are on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox, Commissioners Ricky Wright and Mike Joyner were present at the meeting.

MINUTES OF MAY 6, 2005 MEETING

Chairman Fox made a motion to waive the reading of the minutes from the May 6, 2005, meeting into the record. Seconded by Commissioner Wright. So Ordered. Chairman Fox made a motion to approve the minutes from the May 6, 2005, meeting. Seconded by Commissioner Wright. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox asked Commissioners Wright and Joyner if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Wright replied that he found no conflicts of interest. Commissioner Joyner recused himself from contested case #3, Club Deep Oros. Chairman Fox recused himself from hearing case #32, Marrz.

Chief Deputy Counsel Fred Gregory stated that case #50, One Stop II, would be carried over.

I. HEARING CASES- 71 Listed

Chief Deputy Counsel Fred Gregory asked if there was anyone present to speak regarding contested case #1, Crown Central. No one was present to speak. Mr. Gregory went on to state that Assistant Counsel Renee Cowick represented the ABC Commission regarding this case. It was a sell to an underage violation. No one from Crown Central was present at the administrative hearing. Ms. Cowick filed a Motion for Sanctions for failure to appear at the March 1, 2005, administrative hearing. Based on the Conclusions of Law and Motion for Sanctions, Administrative Law Judge Augustus B. Elkins II, ruled that it was proper and lawful that the ABC Commission suspend the ABC permits for ten days and pay a penalty of \$500.00. Mr. Gregory recommended that the Commission adopt the decision of the Judge Elkins. Commissioner Joyner made a motion to adopt the recommended decision. Seconded by Commissioner Wright. So Ordered.

Chief Deputy Counsel Fred Gregory asked if there was anyone present to speak on behalf of contested case #2, Akumi. No one was present to speak. Mr. Gregory stated that Assistant Counsel LoRita Pinnix represented the ABC Commission regarding this case. It was a sell to an underage violation. Administrative Law Judge Melissa Owens Lassiter heard the case on

February 8, 2005, and based on Findings of Fact and Conclusions of Law, she recommend a twenty day suspension, with the last ten days avoided upon a payment of \$500.00. Mr. Gregory recommended that the Commission adopt the decision of Judge Lassiter. Commissioner Joyner made a motion to adopt the recommended decision. Seconded by Commissioner Wright. So Ordered.

Chief Deputy Counsel Fred Gregory stated that Assistant Counsel LoRita Pinnix represented the ABC Commission regarding application case #3, Club Deep Oros. Attorney Eric D. Levine represented Mr. Marc Hubbard, owner of Club Deep Oros. Ms. Pinnix stated that the case was heard on February 16, 2005, before Administrative Law Judge Beecher R. Gray. Based on the findings, there were four counts of underage sell violations, eight counts of open to the public violations and possessing alcoholic beverages for sell without holding the proper permit. Judge Gray recommended that the permits not be issued. Ms. Pinnix stated Mr. Levine had filed exceptions and copies had been provided to the Commission.

Mr. Levine stated that Mr. Hubbard had another attorney at the hearing. He went on to state that there was some confusion with notice to Mr. Hubbard. Mr. Levine felt that some type of training overseen by the ABC Commission could have cured the underage violations. Mr. Levine went on to state that there appeared to be some type of characterization at the party that occurred on January 22, 2005. The ABC Officers could characterize payment of an admission charge at the door and then someone handing them beer constitutes the purchase of a beer. Mr. Levine further stated that he found it strange that the officer that was handed the beer didn't ask why he was given the beer. When the officer was asked why he thought giving a beer was a purchase, he stated that was what Chief Cox told him.

Commissioner Joyner asked Mr. Levine if based on the officer's testimony, was the officer drawing conclusions based upon instructions from Chief Cox. Mr. Levine stated that was his testimony. Commissioner Joyner further asked if it was a policeman or an ABC Officer. Mr. Levine stated that it was an officer. Commissioner Joyner asked who gave the officer the beer. Mr. Levine stated that the transcript doesn't say. Commissioner Joyner asked if Mr. Hubbard knew who gave the officer the beer. Mr. Levine stated that he didn't think his client knew who gave the officer the beer. He went on to state that he felt that his client is being singled out because of his past history.

Mr. Levine stated that he thought a fair sentence would be if the Commission ordered some sort of fine and gave Mr. Hubbard some continuing education classes.

Chairman Fox stated that he had a couple of questions. Chairman Fox asked for some clarification on whether it was a private party on January 22, 2005. Mr. Levine stated that it was. Chairman Fox further asked if you have to pay \$40.00 in order to get into a private party. Mr. Hubbard stated that they had an artist by the name of "T I", who was performing in concert. He further stated that it cost him \$25,000.00 to bring the artist and on that night they were doing a BYOB function. He stated that he even told an older gentleman, who he later found out to be an undercover officer, that they didn't have ABC permits and weren't selling alcohol. They were having a BYOB function and if he wanted to go purchase beer for himself and bring it back they would be more than happy to refrigerate it for him. Mr. Hubbard further stated that he had been in business since 1996 and had never been cited for an underage violation.

Chairman Fox asked Mr. Hubbard if he had been in business at this location since 1996. Mr. Hubbard stated no, but at various locations. Chairman Fox asked why was there 19 cases and 15 cans of beer found in an office. Mr. Hubbard stated that the artist "T I" had an rider in his contract, which meant that he could request things that he wanted on hand, like beer and juice. He went on to state that the promoter handled the rider.

Commissioner Joyner asked Mr. Levine what was his viewpoint on why the S.W.A.T. team was at the establishment. Mr. Levine stated that he could only guess and say because it's a young black audience and maybe they thought that they would be doing something wrong. Mr. Levine said that would only be a guess, but he didn't know why they did it.

Ms. Pinnix stated that the September 18, 2005, investigation was part of an ongoing investigation by the Charlotte-Mecklenburg ABC and they knew they would be back in the business at some point in the future and that was why they didn't say anything to Mr. Hubbard. She went on to state that the beer wasn't labeled to distinguish whose beer it was.

Chairman Fox made a motion to adopt the recommended decision of Judge Gray. Seconded Commissioner Wright. So Ordered.

Chief Deputy Counsel Fred Gregory stated that Michael Prince was present to speak on behalf of his business, case #38, Burke Street Pub. Mr. Prince gave some background information on the violation that occurred on New Year's Eve, December 31, 2004. Some Alcohol Law Enforcement agents came in with an underage person. The doorman recognized the agents because they come in every other week. The DJ was charging a \$5.00 cover charge; the doorman didn't know if the agents were there in an official capacity or were off duty, no badges were shown, so he charged them the cover charge. They went to the bar, no one was carded and the bartender assumed they were all of age and sold a beer to the underage person.

Commissioner Joyner asked Mr. Prince if the agents usually come into his establishment and drink a beer. Mr. Prince stated not the ALE Agents, but he does have a lot ABC Officers that come in when they are off duty and purchase alcohol.

Chairman Fox asked how many members did he have. Mr. Prince stated that he had 1,500 members. Mr. Prince made reference to past violations. He stated that his attorney in Winston-Salem told him that he had never been before the Commission before and wasn't sure what to expect. Mr. Prince would have to pay to him drive two hours to Raleigh, plus any fines the Commission might impose. His attorney advised him to just settle the case and pay the fine. Mr. Prince stated that he wished that he had come before the Commission instead.

Chairman Fox stated that he understood him not wanting to pay his attorney from Winston-Salem to drive to Raleigh and that if another violation occurs he might want to think of hiring an attorney in Raleigh. He also advised him that the violations are stacking up and is building a really bad record.

Chairman Fox asked Mr. Prince when was the last time that he or his staff had attended an education class. Mr. Prince replied that they attend one every year in September before school starts. Chairman Fox made a motion to ratify the offer and that he attend a bars class within the next 30 days. Seconded by Commissioner Wright. So Ordered.

Chief Deputy Counsel Fred Gregory stated that Milton Brooks Sr. and Milton Brooks Jr., owners of case #47, Rookies was present to speak on behalf of their business. Milton Brooks Jr., stated that the business is a sports bar and pool hall and that this is their third location. He went on to state that they do allow patrons 18 years of age and older to come in and play pool. Not being from this area, they were unfamiliar with the large number of 18, 19 and 20 year olds that would come in. He further stated that in regard to this particular incident a 20 and 21-year old came in and the 21 year old came up to the bar and ordered a beer. The bartender set the beer on the bar and told the 21 year old that his beer was ready. They were playing pool at the time. The 21 year old told the 20 year old to go get his beer for him, which was what he did. The 20 year old did not drink the beer nor did he purchase the beer, he just took the beer back to the 21 year old.

Commissioner Joyner asked them how are they going to resolve the situation. Mr. Brooks Sr. stated that they had changed to only allowing 21 years and older into the place. Mr. Brooks Jr. stated that they were asking for a break on the penalty. Commissioner Wright stated that he agreed with what Commissioner Joyner was saying, but made a motion to reduce the penalty to \$1,000.00. Seconded by Chairman Fox on the condition that within the next 30 days they attend a bars class. So Ordered.

Chief Deputy Counsel stated that Mr. Glenn B. Lassiter, Jr., was present to speak on behalf of his client, case #68, Etna 3201. Mr. Lassiter stated that Pantry has 330 stores in North Carolina and that he works pretty hard with them to formulate training programs that attempt to avoid actual sales to actual underage people that are actually going out and drinking the beer and might hurt someone. Mr. Lassiter said that they went to the administrative hearing and were not able to get the clerk that sold the alcohol. He went on to state that it's hard to get someone to come to court after they have been fired. He further stated that he was asking the Commission for some consideration in the active suspension.

Chairman Fox asked Assistant Counsel Renee Cowick if she had anything to add. Ms. Cowick stated that she didn't have a problem with waiving the five-day active suspension and the employees attending BARS classes. Chairman Fox made a motion to waive the active suspension, to increase the penalty payment to \$3,500.00 on the stipulation that they attend a BARS class within the next 30 days. Seconded by Commissioner Wright. So Ordered.

Commissioner Wright made a motion to ratified case #32, Marrz. Seconded by Commissioner Joyner. So Ordered.

Chairman Fox made a motion to approve the remaining Offers in Compromise, with the exception of #47, Rookies and #68, Etna 3201, which had been earlier ratified and #50, One Stop II, carry over case. Seconded by Commissioner Wright. So Ordered.

II. FIRST OFFENSE CASES – 23 listed

The following is a list of first offense violation cases, in which Final Agency Decisions were signed by the Chairman on June 3, 2005, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Crossroads Grill - 4408 Potter Road, Matthews, NC 28105
2. Xpress Food Mart – 1124 Raleigh Road, Rocky Mount, NC 27803
3. Fishmongers – 806 West Main Street, Durham, NC 27701
4. Mountain Energy 26 – 5445 Asheville Hwy. – Suite 2, Hendersonville, NC 28760
5. Quick Trip – 589 Brevard Road, Asheville, NC 28806
6. Jo Jas Superette – 2706 Norwood Street SW, Lenoir, NC 28645
7. Scores Sports Bar – 218 East 5th Street, Greenville, NC 27858
8. Pure Mart 17 – 305 Unionville Indian Trail Road, Indian Trail, NC 29079
9. T and D Mart – 1524 Wake Forest Road, Raleigh, NC 27604
10. Tonys Pizza – Hickory Ridge Shopping Center, Hickory, NC 28602
11. Super China Buffet – 143 Plaza Drive, Forest City, NC 28043
12. Williams Convenience Mart – 327 Ferguson Street, Littleton, NC 28750
13. Trade Mart 80 – 4901 Hwy 58 North, Wilson, NC 27893
14. Ray's Gas and Grocery – 13577 West NC-97, Zebulon, NC 27597
15. El Paisano – 3957 Eastern Avenue, Rocky Mount, NC 27804
16. Efland Supermarket – 3419 US Hwy 70 West, Efland, NC 27243
17. Kangaroo Express 921 – 1908 US Hwy 117 South, Goldsboro, NC 27530
18. Food Lion 1692 – 219 NC Hwy 111 South, Goldsboro, NC 27532
19. Kangaroo Express 3471 – 4940 US 264 West, Wilson, NC 27893
20. Pantry 303 – 100 Rankin Street and South Main Street, Mount Holly, NC 28120
21. Pantry 940 – 4934 US Hwy 264 South, Wilson, NC 27893
22. Smokers Express 3479 – 1900 Hwy 70 East, Garner, NC 27529
23. Zip Mart 3094 – 4203 Fayetteville Road, Raleigh, NC 27603

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases. Seconded by Commissioner Wright. So Ordered.

III. ABC STORE LOCATION –MOUNT HOLLY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the temporary location of an ABC store in Mount Holly, North Carolina. On May 4, 2005, the ABC Commission received a letter from the City of Mount Holly requesting permission for a temporary location of the Mount Holly ABC store. On May 4, 2005, the ABC Commission requested that Alcohol Law Enforcement conduct an inspection of the proposed temporary location, and on May 6, 2005, ALE Supervisor J. Richard Griffin began the investigation.

The temporary store will be located in the Spring Crossing Shopping Center at 2100 Spring Street, Suite B and C, Mount Holly, North Carolina. The proposed property is currently owned by NC MG Properties, LLC. The board is currently in negotiations with the landlord to lease the temporary store location for a period of 18 months for \$1,950.00 a month. The investigation found no conflict of interest between the local ABC Board members or and the property owner.

The nearest church is the Mount Holly Church of God, located .2 miles from the proposed location. The nearest school is Mount Holly Middle School, located .6 miles from the proposed location.

Pursuant to ABC Commission regulations, Notice of Intent to Open an ABC Store was posted on the property on May 3, 2005. To date no objections have been received.

Mr. Herring recommended that the ABC Commission approve the site.

Chairman Fox made a motion to approve the request. Seconded by Commissioner Wright. So Ordered.

IV. ABC STORE LOCATION – MECKLENBURG COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC store in Charlotte, North Carolina. On April 11, 2005, the ABC Commission received a letter from Mecklenburg County ABC Board Chief Executive Officer Calvin W. McDougal requesting approval to open an ABC store in Charlotte, North Carolina. The ABC Commission requested that Alcohol Law Enforcement conduct an inspection of the proposed location, and on April 22, 2005, ALE Supervisor Richard Griffin began the investigation.

The proposed location is in Wilkinson Crossing Shopping Center, which is still under construction. The board has signed a five-year lease with property owner Wilkinson Crossing LLC for \$82,500.00 a year for the first two years and \$85,000.00 a year for the last three years. The investigation found no conflict of interest between the local ABC Board members or and the property owner.

The nearest church is Redeemer Lutheran Church and is .4 miles from the proposed location. The nearest school is Ashley Park University Center located at .5 miles from the proposed location.

Pursuant to ABC Commission regulations, Notice of Intent to Open an ABC Store was posted on the property on April 20, 2005. On May 20, 2005, Mecklenburg County ABC Board received one letter of objection in opposition to the proposed relocation. The reason given was that they

didn't want any more stores on the west side of Charlotte; they thought that there were enough problems there.

Mr. Herring recommended that the ABC Commission approve the proposed location.

Chairman Fox made a motion to approve the request. Seconded by Commissioner Wright. So Ordered.

V. ABC STORE LOCATION – WARREN COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Littleton, North Carolina. On April 19, 2005, the ABC Commission received a letter from Warren County ABC Board Administrator Larry C. Spruill requesting approval to open an ABC store in Littleton, North Carolina. The ABC Commission requested that Alcohol Law Enforcement conduct an inspection of the proposed location, and on April 19, 2005, ALE Supervisor Jeff Lasater began the investigation.

The proposed location is currently under construction, but will be located in the Lakeside Shopping Center, near Lake Gaston. The lease is contingent upon approval of the ABC Store, therefore hasn't been signed yet by either party. The proposed location is owned by Lake Gaston Shopping Center Out parcel, Limited Liability Company. The investigation found no conflict of interest between the local ABC Board members or and the property owner.

The nearest church is the Lakeside Lutheran Church, is approximately .1 mile from the proposed location. The nearest school is Vaughn Elementary School and is approximately 10 miles from the proposed location.

Pursuant to ABC Commission regulations, Notice of Intent to Open an ABC Store was posted on the property on May 4, 2005. There were two objections to the site. They were from Halifax County ABC Board, who operates an ABC Store in Littleton, NC and stated that the sales in the fall and winter months were already minimal and opening another store in the same area would have a negative effect. Northampton County ABC Board had the same concerns. They operate a store in Gaston, which derives a lot of profits during the lake season. Another store in the same area would also have a negative effect on them as well.

Mr. Herring recommended that the ABC Commission approve the proposed location.

Chairman Fox made a motion to approve the request. Seconded by Commissioner Wright. So Ordered.

VI. OTHER BUSINESS

Andy Ellen, General Counsel of North Carolina Retailers Merchants Association, spoke to the Commission regard to a letter that he sent to Chairman Fox on May 24, 2005. Mr. Ellen requested that the Commission reverse its decision on the Mandatory Split Case fee for two reasons: 1.) Failure of the Commission to go through the proper Rulemaking procedures under chapter 150-b of the Administrative Procedures Act. 2.) There was not an appropriate request for declaratory ruling properly before the Commission, due to the fact that the Commission failed to act on Mr. Parson's request for a declaratory ruling within 60 days under chapter 150-b (4) and the fact that an agreed party was not named at Mr. Parson's request, therefore not valid.

Chairman Fox stated that there is a Senate Bill and a House Bill on the floor to change that and speaking just for himself, he wasn't willing to make any changes with what the Commission did in April.

With no further business, the meeting adjourned.

Douglas A. Fox
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany Goodson, Legal Division